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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 637,403	08-11-2000	Aldo M. Pitt	0046,2001-000	7297

21005 7590 05-20-2003

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EXAMINER

CINTINS, IVARS C

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 05-20-2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

A3-16

Office Action Summary

Application No.
09/637,403

Applicant(s)
Pitt et al.

Examiner
Ivars Cintins

Art Unit
1724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 7, 2003
- 2a) This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-41, 43-45, 50-61, 63-70, and 72-82 is/are pending in the application.
- 4a) Of the above, claim(s) 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-41, 43-45, 50, 51, 53-61, 63-70, and 72-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6) ☐ Other: _____

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As pointed out in the previous Office action, claim 52 is withdrawn from further consideration, as being directed to a non-elected invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 38, 39, 41, 43-45, 50, 53-59, 63-68, 73, 76, 78, 80 and 82 are rejected under 35 U.S.C. 102(b) as being anticipated by Stankowski et al. (U.S. Patent No. 5,674,395). The reference discloses a multiwell filtration device which utilizes an ultrafiltration membrane (col. 1, line 33) positioned at an angle with respect to the direction of gravitational force (col. 1, line 22-23). This reference further discloses an embodiment wherein the membrane is flat and is located at the bottom of a chamber (see Fig. 8); and this is all that is required by claims 38, 39, 41, 43-45, 50, 53-59, 63-68, 73, 76, 78, 80 and 82. Applicant should note the two converging walls **102** of the device shown in Fig. 8 are deemed to constitute the "bottom" of chamber

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100, since no other containing wall member is positioned below these converging walls.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 40, 51, 60, 61, 69, 70, 72, 74, 75, 77, 79 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stankowski et al. The reference discloses the claimed invention with the exception of: (1) the recited wedge (claims 40, 51 and 81); (2) the exact angle of the membranes (claims 60, 69, 72, 75 and 79); and (3) the exact number of wells employed (claims 61, 70, 74 and 77). However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a "wedge" to adjust the angle of orientation of the reference membranes, since wedges are typically used to produce and maintain an object at an angle. Also, it would have been obvious to one of ordinary skill in the art at the time the invention was made to angle the membranes of the reference system in the manner recited in claims 60, 69, 72, 75 and 79, since this

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reference clearly discloses a range which overlaps these values (see col. 4, line 28). Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the recited number of wells in the reference system, in order to increase its treatment capacity.

Applicant's arguments filed February 10, 2003 have been noted and carefully considered, but are not deemed to be persuasive of patentability. Applicant argues that Stankowski et al. does not teach a flat membrane at the bottom of a storage container, nor the claimed angling mechanism. It is pointed out, however, that Fig. 8 of this reference shows a device having a "storage" chamber 100 with a "bottom" formed by a pair of converging walls 102, and a flat membrane 106 located on this chamber bottom. It is further pointed out that this reference angles the membranes contained therein at an angle between 1 and 60 degrees with respect to the vertical axis (col. 4, line 28), and this is all that is required by the broadly recited "angling mechanism."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00

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PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Thomas Dunn, can be reached at (703) 308-3316.

The fax phone numbers for this art unit are: (703) 872-9311 for "Official" faxes after Final Rejection; (703) 872-9310 for all other "Official" faxes; and (703) 872-9492 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
May 16, 2003